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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

REPLY COMMENTS OF LDDS WORLDCOM

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt

WORLDCOM, INC.
d/b/a LDDS WorldCom
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 776-1550

Its Attorneys

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SUMMARY

Virtually all commenters agree that the 1996 Act requires that universal service funding no longer be available only to the incumbent LECs, and that all telecommunications providers should have an equal chance to receive portable universal service funding in order to serve all customers. Commenters also agree that under Section 214(e) of the 1996 Act, the definition of an "eligible telecommunications carrier" includes any carrier that uses "any combination" of its own facilities and those facilities resold by others. This "combination" will be characteristic of a large class of hybrid facilities owning/leasing/reselling carriers which is typical of a newly competitive market -- as has been the case in the long distance industry. All commenting parties also agree with LDDS WorldCom's position that the definition of an "eligible carrier" under Section 214(e) includes the use of Section 251(c)(3) unbundled network elements leased at cost from the incumbent LEC or other eligible carrier. Thus, the Commission should clarify that telecommunications carriers buying capacity under Section 251(c)(3) have every right to receive universal service funding because it is entirely consistent with the competitively-neutral, nondiscriminatory, and pro-competitive nature of the 1996 Act.

While some parties suggest that the states alone are entitled to determine who is an "eligible carrier" and impose additional regulatory requirements beyond those already contained in the statute, the Act clearly requires that all such determinations must be based only on the criteria in Section 214(e)(1). Moreover, the states have no authority to violate the national rules which the Commission is charged with establishing under the statute.

Nearly all commenters agree that the Commission's core list of basic universal services is an acceptable basis for a definition, but most commenters join LDDS WorldCom in urging the Commission to include equal access to long distance services and access to toll

blocking or restriction services. LDDS WorldCom also would not oppose including directory assistance and a directory listing. On the other hand, LDDS WorldCom opposes adding an advanced service such as Internet access to the basic list because it is not an essential service and has not been subscribed to by a substantial majority of residential customers. LDDS WorldCom supports extending universal service to small, single-line businesses because these consumers, like residential customers, are especially vulnerable to higher costs that may prevail in some rural and high-cost areas. LDDS WorldCom suggests a regular review process that occurs every three years.

Many parties agree with LDDS WorldCom that TSLRIC offers the most appropriate means of determining economic costs for purposes of calculating universal service subsidy amounts. More importantly, Section 252 of the 1996 Act requires that the rates for interconnection and network elements be based on cost. The same benefits of TSLRIC that the Commission has highlighted in its Section 251 interconnection proceeding for determining the rates for interconnection and unbundled network elements also apply here to universal services. Moreover, the same cost studies that would be required in the Section 251 context would be suitable for universal service purposes as well. Dual use of these cost studies would optimize efficiency. Pending the completion of TSLRIC-based cost studies, LDDS WorldCom would support the interim use of a proxy cost model, like a revised version of the Benchmark Costing Model, because it offers the best available transitional means of calculating costs.

Parties agree universally that the 1996 Act requires that all providers of telecommunications services contribute to universal service. Most commenters join LDDS WorldCom in agreeing on a core list of service providers that must contribute to universal

service funding, including IXC's, LEC's, CAP's, resellers, and CMRS providers of cellular, PCS, and paging services. In its initial comments, LDDS WorldCom stated that enhanced service providers should be included in the contribution pool. At a minimum, entities whose customers are capable of telephony over the Internet (so-called Voice-on-the-Net, or "VON" providers) should be required to pay universal service contribution because they are functionally the same as any other provider of long distance telephony services. VON services are not enhanced services, but rather are telecommunications services under the statute, and therefore should be required to contribute to universal service. Otherwise, the universal service system will be seriously threatened with financial ruin as consumers increasingly use artificially-priced VON services as a means of bypassing the public switched telephone network.

Nearly every commenter agrees that the Commission should assess its universal service funding obligation based on a provider's revenues. While LDDS WorldCom indicated in its initial comments that it tended to support a "value added" approach, it now believes that AT&T's suggested "retail revenues" approach is superior. In fact, LDDS WorldCom supported the retail revenues approach in the FCC's regulatory fees proceeding. Moreover, a single universal service fund should be established for both interstate and intrastate services because it makes the most administrative sense and guarantees needed uniformity and efficiency. Most commenting parties join LDDS WorldCom in agreeing that each carrier should be allowed to assess a surcharge on a per-customer basis that is explicitly affixed to each customer's bill. Although NYNEX argues that the states need flexibility to adopt their own universal service funding mechanisms, such as the "play or pay" system, the Commission should use its statutory preemption authority to expressly prohibit New York and other states from adopting any

implicit, discriminatory funding mechanism that, like the "play or pay" scheme, would violate the 1996 Act.

Almost all parties agree that a neutral third party administrator, one not associated or affiliated with any industry segment or provider, should be selected to administer the new universal service system. LDDS WorldCom supports the selection of a non-governmental entity using a competitive bidding process, but believes that NECA is an unacceptable candidate because it has traditionally represented only the interests of local exchange carriers. The fact that NECA even filed comments advocating various policymaking positions in this proceeding is reason enough to question its neutrality and independence.

Finally, most commenters agree that the current universal service scheme, which is largely embedded in the LEC access charge regime, is contrary to the dictates of the 1996 Act and must be replaced. As the comments of LDDS WorldCom and others explain, all subsidies must be removed immediately from access charges and an interim funding mechanism established. A broad spectrum of parties supports the Commission's tentative conclusion that the carrier common line charge is an implicit, non-cost-based, and discriminatory subsidy that is contrary to the Act and must be eliminated now. LDDS WorldCom agrees that other implicit subsidies in LEC rates, such as USF, LTS, and DEM, should be eliminated as well.

In its initial comments, LDDS WorldCom suggests one possible transitional approach to universal service reform that would not entail any increase in the SLC. This illustrative proposal involves: (1) moving all current universal service obligations into a separate fund to be supported by all telecommunications service providers; (2) setting all LEC access charges at cost, and requiring the LECs over several months to absorb the non-cost-based

expense component of access charges; and (3) requiring Section 251 interconnectors to pay into the separate universal service pool via an interim surcharge based on their retail revenues. This interim approach would not involve any increase in the SLC, and instead would protect universal service, allow rates for local, access, and long distance to decline, and fully compensate the LECs for use of their facilities for interconnection.

Several LECs insist that universal service should remain entwined in the current interstate access charge system. These commenters miss the key point that the current method of funding universal service through above-cost, IXC-only access charges violates the new Act in a multitude of ways and has become untenable. In addition, other LECs argue that any changes to the existing universal service and access charge regimes must make the LECs whole for costs unrecovered and revenues "lost" in the competitive process. Several commenters join LDDS WorldCom in firmly refuting these LECs' demands to be fully compensated for future lost revenues and past network expenditures. What these LECs seek is a throwback to a monopoly rate of return world that is fundamentally incompatible with the explicit requirements of the Act.

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REPLY COMMENTS OF LDDS WORLDCOM

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to the initial comments filed on April 12, 1996 in response to the Notice of Proposed Rulemaking ("Notice"), FCC 96-93, released by the Commission on March 8, 1996 in the above-referenced proceeding.

I. INTRODUCTION

In its initial comments, LDDS WorldCom welcomed the comprehensive, far-reaching changes to universal service that are required by Section 254 of the 1996 Act.¹ LDDS WorldCom first urged the Commission to clarify that universal service funding must be given to as many carriers as meet the statutory definition of an "eligible telecommunications carrier," including carriers leasing network facilities from an incumbent LEC or other carrier under Section 251(c)(3) of the 1996 Act.² LDDS WorldCom also supported adoption of the basic list of universal services proposed by the Commission, with the addition of equal access to all long

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 U.S.C. §§ 151 et seq. ("1996 Act"), at Section 254. For the sake of clarity, LDDS WorldCom will refer to the provisions of the 1996 Act using the section numbers at which they will be codified.

² LDDS WorldCom Comments at 4-7.

distance providers and voluntary call control restrictions.³ Next, LDDS WorldCom generally supported the Benchmark Costing Model ("BCM") as a reasonable cost proxy for determining the incremental costs of providing service in rural and high-cost regions.⁴ A broad universe of telecommunications service providers must be required to contribute to universal service funding, including providers of telephony over the Internet and enhanced service providers.⁵ The current universal service mechanism must be scrapped and replaced with an explicit retail surcharge based on a service provider's gross telecommunications revenues, net of payments to other carriers.⁶ A neutral third-party then should be selected to administer the new universal service system.⁷ Finally, LDDS WorldCom suggested one possible transitional mechanism in which all interstate access charges would be reduced to cost and current universal service obligations remain fully funded by explicit retail surcharges paid by all telecommunications service providers.⁸

Over 250 sets of initial comments were filed in this proceeding. In its reply, LDDS WorldCom will use its limited page allotment to highlight areas of general agreement among the parties, to clarify its position on several issues, and to respond briefly to faulty or unsupported arguments by other parties.

³ LDDS WorldCom Comments at 7-10.

⁴ LDDS WorldCom Comments at 10-14.

⁵ LDDS WorldCom Comments at 14-17.

⁶ LDDS WorldCom Comments at 17-19.

⁷ LDDS WorldCom Comments at 19-20.

⁸ LDDS WorldCom Comments at 20-25.

II. THE COMMENTS GENERALLY FAVOR A DISCRETE CLASS OF UNIVERSAL SERVICES THAT ARE SUPPORTED BY, AND UTILIZED BY, A BROAD AND COMPETITIVELY-NEUTRAL CLASS OF TELECOMMUNICATIONS SERVICE PROVIDERS ON AN EXPLICIT AND NONDISCRIMINATORY BASIS

A. Commenters Agree That Any Telecommunications Provider Meeting The Statutory Definition Of An "Eligible Telecommunications Carrier" Should Receive Universal Service Funds

Virtually all commenters agree that the 1996 Act requires that universal service funding no longer be available only to the incumbent LECs. Instead, all telecommunications providers should have an equal chance to receive universal service funding in order to serve all customers.⁹ As long as a carrier is willing and able to provide the full list of basic universal services to all customers, parties agree that Section 214(e) of the new statute allows that carrier to receive funding.¹⁰ There is also little disagreement that the subsidies must be fully portable, so that they follow the customer, not the carrier.¹¹

Commenters also agree that under Section 214(e) of the 1996 Act, the definition of an "eligible telecommunications carrier" includes any carrier that uses any combination of its own facilities and those facilities resold by others.¹² However, the Rural Telephone Coalition

⁹ LDDS WorldCom Comments at 6; CompTel Comments at 9; LCI Comments at 5.

¹⁰ MCI Comments at 16-17; Sprint Comments at 8, 15-16; PacTel Comments at 13; Colorado PUC Comments at 7; South Carolina PSC Comments at 2-3; NASUCA Comments at 22-23; NCTA Comments at 12; Winstar Comments at 10-11. Indeed, several parties believe that any carrier that contributes funds should also be eligible to receive funds. Vanguard Cellular Comments at 7; 360 Comments at 3-6.

¹¹ AT&T Comments at 9; MCI Comments at 19; Sprint Comments at 10-11; LCI Comments at 5; BellSouth Comments at 14; California PUC Comments at 10; Florida PSC Comments at 17-18; New Jersey BPU Comments at 6; Winstar Comments at 8; ALTS Comments at 14.

¹² Sprint Comments at 16; LCI Comments at 5; TRA Comments at 9; NYNEX Comments at 24; California PUC Comments at 10; New Jersey BPU Comments at 4, 5.

takes the extreme view that "support must only go to those carriers that actually own and maintain facilities" because universal service support "must motivate carriers to invest in these facilities."¹³ Teleport makes a similar point, arguing that the 1996 Act's intent is to "foster full facilities-based alternatives for telecommunications services," so that competitors cannot become eligible for universal service support if they rely on "extensive" resale of LEC facilities.¹⁴ Both parties are dead wrong. Section 214(e)(1)(A) plainly allows an eligible carrier to use its own facilities "or a combination of its own facilities and resale of another carrier's services."¹⁵ As long as at least some portion of a carrier's service is not resold service under Section 251(c)(4), then, the statutory test is satisfied. The new statute does not have the narrow intent of limiting competitive opportunities just to incumbent network owners, but rather the expansive objective of opening the local market to competition of every kind. The "combination" referred to in Section 214(e)(1)(A) will be characteristic of a large class of hybrid facilities owning/leasing/reselling carriers which is typical of a newly competitive market -- as has been the case in the long distance industry.

No party disagrees with LDDS WorldCom's position that the definition of an "eligible carrier" under Section 214(e) includes the use of Section 251(c)(3) unbundled network elements leased at cost from the incumbent LEC or other eligible carrier.¹⁶ In fact, all parties

¹³ REC Comments at 9, 10.

¹⁴ Teleport Comments at 15.

¹⁵ 1996 Act, Section 214(e)(1)(A).

¹⁶ LDDS WorldCom Comments at 6-7.

commenting on this issue support this same view.¹⁷ It is apparent that under Section 251(c)(3), the carrier has in effect stepped into the shoes of the LEC and become the facilities provider.¹⁸ The Commission should clarify that Section 251(c)(3) carriers have every right to receive universal service funding because it is entirely consistent with the competitively-neutral, nondiscriminatory, and pro-competitive nature of the 1996 Act.

Several commenters would place imaginative and completely unsupported restrictions on who can receive universal service funding. For example, Frontier claims that large incumbent LECs should not be allowed to receive any high-cost universal service support,¹⁹ while Time Warner would only allow LECs subject to rate of return regulation to receive funding because price cap LECs have already assumed the risks and costs of the market.²⁰ On the other hand, several parties argue that new market entrants should not even get universal service support,²¹ or must first demonstrate that their costs are no higher than the incumbent LECs' cost.²² These views are obviously inconsistent with the terms and spirit of the Act, and LDDS WorldCom urges the Commission to reject them.

Several parties also suggest that the states alone are entitled to determine who is

¹⁷ CompTel Comments at 16; AT&T Comments at 21; TRA Comments at 9; USTA Comments at 17 n.24.

¹⁸ TRA Comments at 9.

¹⁹ Frontier Comments at 7-8.

²⁰ Time Warner Comments at 11-12.

²¹ Cincinnati Bell Comments at 10.

²² Rural Telephone Coalition Comments at 11-13.

an "eligible carrier" under Section 214(e).²³ Other parties seek to allow the states to impose additional regulatory requirements on eligible carriers beyond those already contained in the statute.²⁴ LDDS WorldCom does not agree. While the states obviously are given the task of selecting an eligible carrier under Section 214(e)(2) of the Act, the Act clearly requires that all determinations must be based on Section 214(e)(1). The statute charges the Commission with establishing national rules which will enhance opportunities for even-handed competition to begin in the local market. In selecting eligible carriers, the states cannot add to or subtract from the FCC's clarification of the relevant statutory language.

Finally, the New Jersey Ratepayer Advocate criticizes Bell Atlantic's proposed "pay or play" scheme, under which "carriers that do not provide service to the entire local exchange area, would incur higher interconnection costs" than incumbent LECs.²⁵ However, the 1996 Act contains no requirement that competitors either match ILEC service areas or pay more than ILECs. The "pay or play" plan acts as an implicit subsidy which is anticompetitive, violates the Commission's competitive neutrality principle, and constitutes a formidable barrier to entry. The Commission should declare in this proceeding that any such proposal or plan to impose asymmetric pricing schemes or service conditions on new entrants vis-a-vis incumbent LECs would be completely contrary to the nondiscriminatory principles of the Act, and cannot stand.

²³ Florida PSC Comments at 13; SBC Comments at 18.

²⁴ GTE Comments at 5; Ameritech Comments at 12; Florida PSC Comments at 13.

²⁵ New Jersey RA Comments at 15.

B. Commenters Support Few Additions To The Commission's Proposed Core List Of Universal Services

There is little disagreement in the initial comments about what services should be subsidized by universal service funding. Nearly all commenters agree that the Commission's core list is a good place to start to delineate only those "basic features necessary for functional use of the network."²⁶ Indeed, many commenters believe that the Commission should go no further than the list it proposed in the Notice.²⁷

In its initial comments, LDDS WorldCom also supports the Commission's proposed universal service list but suggests adding two others services -- equal access to long distance service, and toll restriction services. Other parties agree. A great number of commenters urge the Commission to include equal access to long distance services.²⁸ In fact, only GTE argues specifically that the Commission should not include access to long distance services.²⁹ Numerous parties also saw the need for low-income consumers to have access to

²⁶ CompTel Comments at 5.

²⁷ CompTel Comments at 5-6; MCI Comments at 9; Sprint Comments at 6-7; LCI Comments at 3; Frontier Comments at 3; 360 Comments at 2-3; ITAA/EMA Comments at 4; ITIC Comments at 3-4; CSE Comments at 6-7; TCI Comments at 5.

²⁸ AT&T Comments at 12; Ameritech at 7 n.11; NYNEX Comments at 11-12; PacTel Comments at 15; US West Comments at 5; Cincinnati Bell Comments at 4; California PUC Comments at 6; New York DPS Comments at 12-13; Florida PSC Comments at 7; Illinois CC Comments at 3-4; Ohio PUC Comments at 4; Texas PUC Comments at 8; Michigan PSC Comments at 1; Wisconsin PSC Comments at 7; Indiana URC Comments at 2; Oregon PUC Comments at 6; Idaho PUC Comments at 8; Missouri PSC Comments at 5; Wyoming PSC Comments at 7; Louisiana PSC Comments at 3; Colorado PUC Comments at 3; South Carolina PSC Comments at 3; New Jersey RA Comments at 8; AARP/CFA/CA Comments at 10; GSA Comments at 7-8; NASUCA Comments at 17-18; NCTA Comments at 6; Time Warner Comments at 3-4.

²⁹ GTE Comments at 2.

toll blocking or restriction services.³⁰ Although several commenters argue that toll blocking or restriction services are not necessary or should not be supported by universal service,³¹ LDDS WorldCom believes that low-income consumers should be given the power both to access long distance service, and to choose how to use that service in self-limiting ways that do not jeopardize their basic dialtone service.³²

Other services that parties suggest should be included in the universal service list include directory assistance,³³ and a directory listing.³⁴ LDDS WorldCom would not oppose

³⁰ New York DPS Comments at 13-14; Florida PSC Comments at 14-15; Ohio PUC Comments at 4; Georgia PSC Comments at 5; Michigan PSC Comments at 2; Wisconsin Comments at 12; Indiana URC Comments at 2-3; Oregon PUC Comments at 4-5; New Jersey BPU Comments at 2; Wyoming PSC at 7-8; New York CPB Comments at 2; New Jersey RA Comments at 18-19; D.C. OPC Comments at 6; AARP/CFA/CA Comments at 22; RUS Comments at 11; GSA Comments at 8; NASUCA Comments at 6; Time Warner Comments at 13-14.

³¹ AT&T Comments at 13 n.16; Sprint Comments at 21; LCI Comments at 7 n.6; BellSouth at 12 n.22; PacTel Comments at 22; US West Comments at 7; GTE Comments at 22-23.

³² A few parties argue in favor of a Commission policy prohibiting LECs from disconnecting customers for their nonpayment of toll charges. D.C. OPC Comments at 2-6; UCC Comments at 11; NASUCA Comments at 6. As LDDS WorldCom and others point out in their initial comments, however, there is no justification for mandating such a policy. LDDS WorldCom Comments at 8 n.24; Sprint Comments at 21; ACTA Comments at 5-6; AARP/CFA/CA Comments at 23; Bell Atlantic Comments at 14-15.

³³ USTA Comments at 13; Bell Atlantic Comments at 7; SBC Comments at 8; US West Comments at 5; California PUC Comments at 6; Florida PSC Comments at 7; Illinois CC Comments at 4; New Jersey BPU Comments at 2; Wyoming PSC Comments at 7-8; Louisiana PSC Comments at 3; Colorado PUC Comments at 3; AARP/CFA/CA Comments at 10; NASUCA Comments at 17-18; ALTS Comments at 9.

³⁴ SBC Comments at 8; New York DPS Comments at 12-13; Florida PSC Comments at 7; Ohio PUC Comments at 4; Penn. PUC Comments at 14-15; Idaho PUC Comments at 8; Wyoming PSC Comments at 7-8; Louisiana PSC Comments at 3; Colorado PUC Comments at 3; South Carolina PSC Comments at 3-4; New York CPB Comments at 2; NASUCA Comments at 17-18; AARP/CFA/CA Comments at 10; ALTS Comments at 9.

including these basic services in the Commission's definition. On the other hand, a few parties claim that the list should include Internet access.³⁵ LDDS WorldCom disagrees. Internet access is not an essential service and has not yet been subscribed to by anything close to a substantial majority of residential customers.³⁶ Only when a telecommunications service meets the statutory criteria should the FCC consider including it in the definition.³⁷

In its initial comments, LDDS WorldCom suggests that the definition of universal services for rural and high-cost regions may include more than residential services.³⁸ Many parties argue to the contrary that only residential services are covered,³⁹ or that only the primary residential line should be included.⁴⁰ Other parties claim that all business services are included in universal service,⁴¹ while others argue for a more narrow definition limited to small, single-line businesses.⁴² On balance, extending universal service to small, single-line

³⁵ Alaska PSC Comments at 11; Western Alliance Comments at 12; RUS Comments at 11-12; Kinko's, Inc. Comments at 3-10.

³⁶ See 1996 Act, Section 254(c)(1).

³⁷ LDDS WorldCom Comments at 9. At the same time, this does not suggest that Internet access should not qualify under the statute as an "advanced service" that must be offered on a discounted basis to schools, libraries, and health care providers. See 1996 Act, Sections 254(b)(6), 254(h). LDDS WorldCom would not oppose such a designation.

³⁸ LDDS WorldCom Comments at 9-10.

³⁹ MCI Comments at 9; LCI Comments at 7; BellSouth Comments at 5-6; GTE Comments at 2 n.5; Florida PSC Comments at 6-7; New Jersey RA Comments at 9.

⁴⁰ Illinois CC Comments at 5; Ad Hoc Comments at 12; NCTA Comments at 6.

⁴¹ USTA Comments at 13; Cincinnati Bell Comments at 5; Louisiana PSC Comments at 3; Colorado PUC Comments at 6.

⁴² California PUC Comments at 7; New York CPB Comments at 9-10.

businesses would be appropriate because these consumers, like residential customers, are especially vulnerable to higher costs that may prevail in some rural and high-cost areas.⁴³

Finally, commenting parties generally agree that a regular review process is necessary. Some indicate only that a periodic and regular review is necessary,⁴⁴ while others favor a review every year,⁴⁵ every two years,⁴⁶ every three years,⁴⁷ every three to five years,⁴⁸ or every five years.⁴⁹ LDDS WorldCom suggests that the Commission split the difference and adopt a review process that occurs every three years.

C. While TSLRIC Is The Proper Economic Basis To Determine The Subsidy Amount, A Cost Proxy Model May Be Used On A Transitional Basis

In its initial comments, LDDS WorldCom articulates several overarching costing principles which are echoed in the comments filed by other parties.⁵⁰ First, current rural service rates cannot be presumed to be set at appropriate levels.⁵¹ Second, universal service subsidies should only be geared to make rural/high-cost rates "reasonably comparable" to urban

⁴³ LDDS WorldCom views single-line, voice-grade telephone service to a small business as functionally the same type of service as a single-line, voice-grade telephone service used by a residential subscriber.

⁴⁴ Sprint Comments at 8; USTA Comments at 13-14; Penn. PUC Comments at 15.

⁴⁵ North Dakota PSC Comments at 3.

⁴⁶ Wisconsin Comments at 12.

⁴⁷ New York DPS Comments at 16; D.C. OPC Comments at 13.

⁴⁸ GTE Comments at 3.

⁴⁹ Ameritech Comments at 9.

⁵⁰ LDDS WorldCom Comments at 11-12.

⁵¹ CompTel Comments at 13-14.

rates, and not just simply try to lower the former.⁵² Third, universal service support should be tied directly to economic costs, not LEC revenue requirements,⁵³ so that cost inputs, not price outputs, are what matters.⁵⁴

Many parties agree with LDDS WorldCom that total service long-run incremental cost ("TSLRIC") offers the most appropriate means of determining economic costs for purposes of calculating universal service subsidy amounts.⁵⁵ More importantly, Section 252 of the 1996 Act requires that the rates for interconnection and network elements be "based on cost."⁵⁶ In its recent Notice of Proposed Rulemaking in the interconnection proceeding, the Commission stated that economists and a "broad range of parties" generally agree that, "ideally," the rates for interconnection and unbundled network elements should be based on LRIC,⁵⁷ in part because it would "give appropriate signals to producers and consumers," "ensure efficient entry and utilization of the telecommunications infrastructure," and replicate the end result of "competitive markets."⁵⁸ The same is true here. Moreover, should the Commission direct that

⁵² LCI Comments at 6.

⁵³ TRA Comments at 11.

⁵⁴ ACTA Comments at 6; Penn. PUC Comments at 20-21; Maine PUC et al Comments at 4; New York CPB Comments at 11.

⁵⁵ Ohio PUC Comments at 5; Texas PUC Comments at 17; NASUCA Comments at 18-21; Teleport Comments at 7.

⁵⁶ 1996 Act, Section 252(d)(1).

⁵⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, released April 19, 1996, at para. 126.

⁵⁸ Id. at para 124.

interconnection and network elements rates be LRIC-based, the same cost studies that would be required in that context would be suitable for universal service purposes as well. However, LDDS WorldCom disagrees with those few who would add joint and common costs to the TSLRIC method because this would result in an economically inefficient cost model.⁵⁹

Pending the completion of TSLRIC-based cost studies, LDDS WorldCom would support the interim use of a proxy cost model like the Benchmark Costing Model ("BCM") because it offers the best available transitional means of calculating costs.⁶⁰ However, LDDS WorldCom agrees with MCI that, whatever proxy cost model ultimately may be selected by the Commission in the short-term, that model should not be based on proprietary cost data and should include several improvements over the original version of the BCM.⁶¹

Some parties oppose the use of proxy cost models like BCM,⁶² and offer a whole range of other options, from using "actual" LEC costs,⁶³ to embedded costs,⁶⁴ fully distributed

⁵⁹ Sprint Comments at 14; PacTel Comments at 17-18; Penn. PUC Comments at 17-18.

⁶⁰ AT&T Comments at 14 n.19; MCI Comments at 10-11; Sprint Comments at 11-14; TRA Comments at 12-13; Ameritech Comments at 12; NYNEX Comments at 9-11; PacTel Comments at 17-18; US West Comments at 2; Florida PSC Comments at 9-11; Illinois CC Comments at 6-7; Penn. PUC Comments at 18-19; Maine PUC et al Comments at 5; Wyoming PSC Comments at 8-9; NASUCA Comments at 18-21; NCTA Comments at 8-9; ALTS Comments at 12; Time Warner Comments at 9-10.

⁶¹ MCI Comments at 13.

⁶² SBC Comments at 14-16; GTE Comments at 10; Cincinnati Bell Comments at 9; Texas PUC Comments at 10; Rural Telephone Coalition Comments at 16-17; RUS Comments at 14-16; GSA Comments at 14.

⁶³ Indiana URC Comments at 8; Missouri PSC Comments at 9-10; Western Alliance Comments at 4-6.

⁶⁴ USTA Comments at 17-18.

costs,⁶⁵ and historical costs.⁶⁶ Because none of these approaches can be fully reconciled, and the BCM approach has received a broad base of support, the Commission should use the BCM or other similar cost proxy approach on a short-term basis only until the necessary TSLRIC cost studies have been completed.

Finally, parties generally agree that the Lifeline and Link Up programs are means-tested and targeted correctly for low-income consumers.⁶⁷ LDDS WorldCom urges the Commission to continue utilizing those same methodologies.

D. A Broad Universe Of Telecommunications Service Providers, Including Providers Of Telephone Service Over The Internet, Should Contribute To Universal Service

Parties agree universally that the 1996 Act requires that all telecommunications carriers contribute to universal service.⁶⁸ Many parties note that the statutory definition of a telecommunications carrier extends more broadly to cover all providers of telecommunications services.⁶⁹

Most commenters join LDDS WorldCom in agreeing on a core list of service providers that must contribute to universal service funding, including IXC's, LEC's, CAP's, and

⁶⁵ SBC Comments at 13.

⁶⁶ Michigan PSC Comments at 2.

⁶⁷ CompTel Comments at 19; AT&T Comments at 17-18; LCI Comments at 7; NYNEX Comments at 16; Ohio PUC Comments at 11; New Jersey BPU Comments at 2.

⁶⁸ See, e.g., MCI Comments at 15-16; Sprint Comments at 16; NYNEX Comments at 23; SBC Comments at 20; Florida PSC Comments at 24.

⁶⁹ See, e.g., CompTel Comments at 9; LCI Comments at 5; Frontier Comments at 10; ACTA Comments at 4; USTA Comments at 23; Ameritech Comments at 23; BellSouth Comments at 15; PacTel Comments at 20; California PUC Comments at 21; ICA Comments at 4-5; ALTS Comments at 17;

CMRS providers of cellular, PCS, and paging services.⁷⁰ Not surprisingly, several of these industry groups, including wireless providers,⁷¹ and paging providers,⁷² seek to be excluded altogether from the list of contributors. However, these commenters offer no compelling reason why they should be excluded from the statutory definition.

Some commenters insist that resellers also be included in the contribution pool,⁷³ while TRA opposes inclusion of resellers.⁷⁴ LDDS WorldCom agrees that resellers should be required to contribute to universal service because they meet the statutory definition. However, as will be discussed in the next section, the Commission should adopt a payment mechanism that does not unduly penalize resellers by "double-counting" both their revenues and the revenues of their underlying facilities provider.

In its initial comments, LDDS WorldCom stated that enhanced service providers ("ESPs") should be included in the contribution pool.⁷⁵ At a minimum, entities whose customers are capable of telephony over the Internet (so-called Voice-on-the-Net, or "VON"

⁷⁰ LDDS WorldCom Comments at 14-15; CompTel Comments at 15; LCI Comments at 5; USTA Comments at 23-24; NYNEX Comments at 23; PacTel Comments at 20-21; SBC Comments at 20; Cincinnati Bell Comments at 14; Illinois CC Comments at 9; Ohio PUC Comments at 16; Texas PUC Comments at 20; CSE Comments at 16-17.

⁷¹ Reed Smith Comments at 10-11.

⁷² PCIA Comments at 7 n.21.

⁷³ USTA Comments at 23-24; Ameritech Comments at 23.

⁷⁴ TRA Comments at 6.

⁷⁵ One commenter also joins LDDS WorldCom in urging the Commission to take this opportunity to eliminate the current unjustified ESP exemption from paying interstate access charges because the exemption acts as an implicit subsidy that is directly contrary to the dictates of the 1996 Act. LDDS WorldCom Comments at 15 n.46; SBC Comments at 22-23.

providers) should be required to pay universal service funds because these entities are functionally the same as any other provider of long distance telephony services. Other commenters also seek to include ESPs in the universal service contribution pool.⁷⁶

A number of Internet access providers and online service providers filed comments claiming that they should be excluded from any universal service obligations.⁷⁷

Although these parties insist that they are not providers of telecommunications services, they present some of the best arguments why VON services should be required to contribute to universal service. For example, the Interactive Services Association argues that, under the statute's three-part test, telecommunications services (as opposed to online services) "enable users to transmit information of their own choosing," "operate on a peer-to-peer model" where the information is "transmitted between or among points specified by the user," and involve "no change in the form or content of the information transmitted."⁷⁸ It is obvious that this description fits VON services perfectly. In fact, as LDDS WorldCom points out in its initial comments, VON services do not even meet the FCC's "enhanced services" test.⁷⁹ Thus, no commenter disputes that VON services constitute a telecommunications service under the 1996 Act, and should have already been paying universal service contribution under the 1934 Act.

⁷⁶ LCI Comments at 5; ACTA Comments at 12; Ameritech Comments at 23; SBC Comments at 20; PacTel Comments at 20-21; Wyoming PSC Comments at 3.

⁷⁷ ISA Comments at 5-13; Netscape Comments at 13-14; CIX Comments at 3-4; IIA Comments at 7-8; CompuServe Comments at 8-20; ITIC Comments at 9-10.

⁷⁸ ISA Comments at 6, 7, 8.

⁷⁹ LDDS WorldCom Comments at 16. No telecommunications carriers should be allowed to hide behind their concurrent, discretionary offering of information services that may meet an enhanced services definition.

Thus, VON services are basic telephony that must pay their fair share of interstate access charges and universal service support. In fact, Netscape essentially reaches this same conclusion, admitting that:

as voice, video, fax and data communications are all increasingly carried over both telecommunications and information service networks, in the long run [the current universal service model] will need to give way to a broader, more flexible system, in which all communications providers -- regardless of regulatory classification -- both contribute to and receive support from a "universal" universal service support system.⁸⁰

LDDS WorldCom submits that this day has already arrived. Otherwise, the universal service system will be seriously threatened with impending financial ruin as more consumers migrate to artificially-priced VON services as a means of completely bypassing the public switched telephone network.

E. Contributors To Universal Service Should Pay Explicit Surcharges Based On Their Total Retail Revenues

Nearly every commenter agrees that the Commission should assess its universal service funding obligation based on a provider's revenues. There is less agreement over exactly what type of mechanism to use. AT&T favors imposing a surcharge on a carrier's total retail telecommunications services, both interstate and intrastate.⁸¹ Other parties favor basing the obligation on a telecommunications provider's retail revenues, net of payments to other carriers, such as access charges.⁸² This is sometimes referred to as the "value-added" approach.⁸³ Still

⁸⁰ Netscape Comments at 18.

⁸¹ AT&T Comments at 8.

⁸² CompTel Comments at 15; MCI Comments at 12; Sprint Comments at 17; USTA Comments at 24-25; NYNEX Comments at 24; SBC Comments at 18; GTE Comments at 17; New York DPS Comments at 9-10; Illinois CC Comments at 9-10; Ohio PUC Comments

other parties favor using a percentage of all gross revenues.⁸⁴

While LDDS WorldCom indicated in its initial comments that it supports a "value added" approach, AT&T's arguments in favor of a retail revenues approach are persuasive.⁸⁵ LDDS WorldCom supported the retail revenues approach in the FCC's regulatory fees proceeding,⁸⁶ and now supports this same approach in the universal service context as well.

Other suggested methods are flawed. For example, the gross revenues approach double counts certain revenues, such as wholesale services resold to carrier customers. The retail revenues approach would remedy this problem because, although resellers would also contribute, they could apply for a surcharge credit. Other ideas mentioned in the comments, including using presubscribed lines,⁸⁷ a hybrid per-provider assessment based both on revenues and lines,⁸⁸ or a graduated or proportional system,⁸⁹ find little support from other parties.

at 16; Maine PUC Comments at 20; Indiana URC Comments at 5; Oregon PUC Comments at 8; New York CPB Comments at 10; NCTA Comments at 24; MFS Comments at 16; ALTS Comments at 18; UTC Comments at 11.

⁸³ Ad Hoc Comments at 21-22; Time Warner Comments at 22-23.

⁸⁴ Ameritech Comments at 23-24; PacTel Comments at 21; US West Comments at 17; Cincinnati Bell Comments at 15; Michigan PSC Comments at 2; Wisconsin PSC Comments at 19; New Jersey RA Comments at 25; 360 Comments at 9.

⁸⁵ AT&T Comments at 8-10.

⁸⁶ See Comments of LDDS Communications, Inc., MD Docket No. 95-3, filed February 13, 1995, at 16; Reply Comments of LDDS Communications, Inc., MD Docket No. 95-3, filed February 28, 1995, at 5.

⁸⁷ Bell Atlantic Comments at 14.

⁸⁸ New Jersey BPU Comments at 5.

⁸⁹ PCIA Comments at 8; MobileMedia Comments at 11-12.

Some parties advocate using total retail revenues,⁹⁰ while other parties seem to favor only using interstate revenues.⁹¹ LDDS WorldCom agrees with AT&T that a single fund for all services, both interstate and intrastate, is preferable because it makes the most administrative sense, guarantees needed uniformity and efficiency, and assures that states will not adopt rules "inconsistent with" the Commission's approach.⁹² In addition, the Act gives the Commission and Joint Board broad powers to impose contribution obligations on "all providers of telecommunications services,"⁹³ not just interstate providers. Most commenting parties also agree that each carrier should assess a surcharge on a per-customer basis that is explicitly affixed to each customer's bill.⁹⁴ LDDS WorldCom urges the Commission to adopt this approach.

Finally, NYNEX argues that the states need flexibility to adopt their own universal service funding mechanisms. One possibility mentioned by NYNEX is the "play or pay" system of interconnection compensation which has already been adopted in New York. NYNEX describes "play or pay" as establishing one interconnection rate for incumbent LECs

⁹⁰ AT&T Comments at 7-8; Sprint Comments at 17; LCI Comments at 5; NCTA Comments at 24.

⁹¹ Frontier Comments at 10; USTA Comments at 24-25; BellSouth Comments at 15-16; NYNEX Comments at 24; SBC Comments at 18; PacTel Comments at 21; Cincinnati Bell Comments at 15; New York DPS Comments at 9; Florida PSC Comments at 25; Colorado PUC Comments at 6.

⁹² 1996 Act, Section 254(f).

⁹³ 1996 Act, Section 254(b)(4).

⁹⁴ CompTel Comments at 16-17, 20; AT&T Comments at 7-8; LCI Comments at 5; USTA Comments at 24-25; NYNEX Comments at 24; US West Comments at 15; GTE Comments at 16; Wisconsin PSC Comments at 4-5; CSE Comments at 5; ITAA/EMA Comments at 16.